

August 28, 2007

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E9900553**

GENE AMONDSON
Code Enforcement Appeal

Location: 20103 Vashon Highway Southwest, Vashon

Appellant: Gene Amondson
represented by **Jon W. Knudson**, Attorney
P.O. Box 229
Vashon, Washington 98070
Telephone: (206) 463-6711

King County: Department of Development and Environmental Services (DDES)
represented by **Sheryl Lux**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 205-1525
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal with revised compliance schedule
Department's Final Recommendation:	Deny appeal with revised compliance schedule
Examiner's Decision:	Deny appeal with further revised compliance schedule

EXAMINER PROCEEDINGS:

Scheduled hearing postponed:	April 17, 2007
Hearing opened:	May 10, 2007
Hearing closed:	May 10, 2007

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On February 8, 2007, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Appellant Gene Amondson that found code violations on an RA-10-SO-zoned property located at 20103 Vashon Highway Southwest on unincorporated Vashon Island. The Notice and Order cited Mr. Amondson and the property with the following violations of County code:
 - A. Construction of a duplex residence (in 1975) without required permits, inspections and approvals.
 - B. Conversion of a garage/storage building into a duplex without required permits, inspections and approvals.

The Notice and Order notes that there are two allowed residences (built in 1908 and 1955) onsite, and that therefore no additional residential units are permitted under the existing RA-10-SO zoning. The violations were required by the Notice and Order to be corrected by vacation and discontinuance of occupancy of the 1975 duplex residence by May 14, 2007, and application for the required permits, inspections and approvals as an allowed accessory use, with a complete application to be submitted by June 13, 2007. If the permit is not applied for, then the subject structure was required to be demolished under a demolition permit by June 13, 2007, and the demolition debris removed from the premises. If the permit application was submitted but the permit denied, then such demolition and removal was required to be accomplished within 60 days from the date of permit denial. The garage/storage building converted into a duplex was subject to the same requirements, with the additional alternative of returning the structure to the approved use, a garage/storage use.
2. Mr. Amondson filed a timely appeal of the Notice and Order, claiming that he relied on an unofficial “wink-and-a-nod” County acceptance of the 1975 duplex structure after it had been “red-tagged” for construction without required permits. Mr. Amondson contends that County building officials essentially informed him that they would turn a blind eye to the construction and that the building would be placed on the tax rolls. Mr. Amondson claims that his reliance on such County actions 23 years ago presents an effective *equitable estoppel* bar against the County’s enforcing any permit or zoning requirements on the structure, as the County had acquiesced in the development. Mr. Amondson further argues that placement of the 1975 duplex structure on the tax rolls after construction constitutes a peremptory legitimization of the structure. In summary with respect to his reliance, Appellant Amondson argues that the County acknowledgment of his structures without enforcement 23 years ago constitutes *waiver* and *estoppel* of enforcement, that he has been prejudiced by having paid taxes all along, and that there is “nothing wrong” except that no permits have been obtained for the subject structures.
3. Mr. Amondson also contends that the housing which he has provided by the subject structures is desperately needed on Vashon Island, that it is of quality construction, and that it is served by a suitable and well-performing onsite sewage disposal system (a septic/drainfield system) installed

by a qualified contractor and presents no health hazards. He argues that the County's zoning regulations are inappropriate for the subject area and should accommodate more housing development.

4. As Mr. Amondson desires to retain the 1975 duplex structure for storage purposes and intends to vacate the garage/storage structure, he requests an extended period for compliance to explore his options, and desires that all avenues be exhausted to preclude demolition of the structures.
5. DDES testified that it does not dispute the need for housing stock on Vashon Island and the quality of the construction of the two structures in question, but notes that the issues addressed by the Notice and Order have to do with required Health Department, electrical and building permits which were not obtained for the structures in question.
6. DDES recommended a 90-day compliance period as established by the Notice and Order.
7. The garage/storage building onsite is a red metal building which was constructed under building permit B93A2574 for a garage/storage building and was later converted to duplex residential use with a studio and apartment on the first floor. The second story is vacated. The 1975 duplex was built without benefit of any building permit. The onsite sewage disposal system serving the structures was installed without benefit of the required Health Department permit and inspection.
8. The preponderance of the evidence in the record demonstrates that the 1975 duplex structure was built without permits, inspections and approvals. The red metal building, originally built under a proper permit for another use, was converted into a residential structure without benefit of the necessary permits, inspections and approvals. The permit violations found by the Notice and Order are therefore correct.

CONCLUSIONS:

1. The issues of the appropriateness of the zoning applied to the property and what the zoning regulations permit with respect to housing provision are not matters under the Examiner's authority. The legislative wisdom of state and county lawmakers must be respected "as is" in deciding a code compliance matter, since policy decisions are the province of the legislative branch. An administrative or quasi-judicial decisionmaker cannot substitute the decisionmaker's judgment for that of the legislative body "with respect to the wisdom and necessity of a regulation." [*Cazzanigi v. General Electric Credit*, 132 Wn. 2d 433, 449, 938 P.2d 819 (1997); *Rental Owners v. Thurston County*, 85 Wn. App. 171, 186-87, 931 P.2d 208 (1997)] Mr. Amondson's claims and concerns in this regard belong in the legislative arena. The Examiner makes no judgment pro or con with respect to these issues.
2. The Examiner cannot address the Appellant's complaints from a common law equity standpoint (essentially with the Appellant asserting that enforcement of the subject regulations is inequitable). The Examiner is without jurisdiction to consider matters of equity in the law, such as the asserted *waiver* and *estoppel* based on Mr. Amondson's claims of reliance on informal County acquiescence of his structures, as well as his claim of prejudice by his having paid property taxes for structures which were placed on the County tax rolls. They must instead be taken to a court of general jurisdiction, the Superior Court. The Examiner is generally limited to

applying “black letter” law as duly enacted by statute, ordinance and rule, and has no authority to adjudicate common law issues such as claims in equity. [*Chaussee v. Snohomish County*, 38 Wn.App. 630; 689 P.2d 1084 (1984)]

3. The preponderance of the evidence in the record demonstrates that the structural work addressed by the Notice and Order is required to be conducted under the auspices of valid permits and necessary inspections and approvals. As the proper permits, inspections and approvals have not been obtained, the violations found by the Notice and Order are correct. The Notice and Order shall therefore be sustained, with revisions to the compliance schedule to change pertinent dates to provide a new 90-day schedule, but extend it somewhat to provide the Appellant with some reasonable additional time to explore his options for bringing the structures into code compliance. (No imminent hazards are apparent from the record which would call for a more accelerated approach.)

DECISION:

The appeal is DENIED for the reasons noted above, and the Notice and Order sustained, except that the compliance requirements shall be revised as stated in the following Order.

ORDER:

1. Vacate and discontinue occupancy of the 1975 duplex structure as a residence *by no later than January 31, 2008*.
2. If the Appellant/property owner desires to retain the 1975 duplex structure onsite, a complete application for the necessary permits, inspections and approvals for use of the structure as an allowed use under applicable County regulations shall be submitted *by no later than December 14, 2007* (prior obtainment of sanitation approval by the Health Department may be required; consult DDES). Any and all deadlines for requested further information for processing of the permit(s) shall be met and the permit obtained within required deadlines, if approved.
3. As an alternative to seeking the necessary permits, inspections and approvals for the 1975 duplex structure, the work may instead be demolished/removed *by no later than February 28, 2008*, with the obtainment of a demolition permit as may be required by DDES and removal of the demolition debris from the site and disposal at an approved facility.
4. If the permit application option is chosen by the Appellant/property owner but the permit is ultimately denied, demolition and/or removal of the non-permitted construction shall be accomplished **within 30 days from the date of written permit denial**, under the same requirements as above.
5. The above permit application/demolition requirements and their deadlines shall apply in identical form to the red metal converted garage/storage building, except that the Appellant has the additional option of restoring it to its approved use under building permit B93A2574 as a garage/storage building.

6. No penalties shall be assessed by DDES against Mr. Amondson and/or the property if the above deadlines are complied with. If any one of them is not, DDES may assess penalties against Mr. Amondson and/or the property retroactive to the date of this order as provided by County code.

ORDERED August 28, 2007.

Peter T. Donahue
King County Hearing Examiner

TRANSMITTED August 28, 2007 via certified mail to the following:

Gene Amondson	Jon W. Knudson
Box K	Attorney at Law
Vashon WA 98070	P.O. Box 229
	Vashon WA 98070

TRANSMITTED August 28, 2007, to the following parties and interested persons of record:

Gene Amondson	Jon W. Knudson	Deidre Andrus
Box K	Attorney at Law	DDES/LUSD
Vashon WA 98070	P.O. Box 229	MS OAK-DE-0100
	Vashon WA 98070	
Elizabeth Deraitus	Jo Horvath	Sheryl Lux
DDES/LUSD	DDES/BSO	DDES/LUSD
MS OAK-DE-0100	MS OAK-DE-0100	MS OAK-DE-0100
Lamar Reed	Toya Williams	
DDES/LUSD	DDES/LUSD	
MS-OAK-DE-0100	MS OAK-DE-0100	

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE MAY 10, 2007, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT
AND ENVIRONMENTAL SERVICES FILE NO. E9900553.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Sheryl Lux representing the Department, Jon Knudson representing the Appellant, and Appellant Gene Amondson.

The following Exhibits were offered and entered into the record:

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|----------------|---|
| Exhibit No. 1 | DDES staff report to the Hearing Examiner for May 10, 2007 |
| Exhibit No. 2 | Copy of the Notice & Order issued February 8, 2007 |
| Exhibit No. 3 | Copy of the Notice and Statement of Appeal received February 12, 2007 |
| Exhibit No. 4 | Copies of codes cited in the Notice & Order |
| Exhibit No. 5 | Copy of Assessor's records for parcel #0622039130 |
| Exhibit No. 6 | Copy of GIS zoning map showing the surrounding zoning, plotted April 24, 2007 |
| Exhibit No. 7 | Copy of 2005 aerial from GIS, plotted April 24, 2007 |
| Exhibit No. 8 | May 2, 1970 aerial photograph of subject area with annotation |
| Exhibit No. 9 | Visual Earth aerial map of subject property with annotation |
| Exhibit No. 10 | Photographs (4 pages of color copies) of subject property |
| Exhibit No. 11 | Letter from Christa R. Bond dated May 9, 2007 |
| Exhibit No. 12 | Letter from Nancy M. Vanderpool, Ph.D. dated May 4, 2007 |

PTD:ms
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